



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 16, 2023

IN THE MATTER OF:

Appeal Board No. 628707

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 13, 2023 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer applied to the Appeal Board, pursuant to Labor Law § 620 (3), for a reopening and reconsideration of the Judge's decision. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a school district as a per diem substitute teacher during the 2021-2022 academic year. He was aware that in order to return to work as a substitute teacher in the 2022-2023 school year,

he had to meet the employer's "Renewal Requirements" by August 17, 2022.

The claimant's assignment ended on June 23, 2022, the last day of school. The employer did not offer the claimant any further assignments after that date.

The claimant did not meet the Renewal Requirements by the August deadline. The employer notified the claimant on September 2, 2022 that his employment was suspended as a result and extended the deadline to meet the requirements to September 23, 2022.

The claimant did not complete the renewal requirements by the September deadline. On October 31, 2022, the employer notified the claimant that his employment was terminated.

OPINION: The credible evidence establishes that the claimant, a per diem substitute teacher, worked until the end of the last assignment given to him by the employer. The employer does not dispute that it did not offer the claimant any further assignments after his final one ended on June 23, 2022. It has long been held that with respect to per diem employment, the employment relationship ends at the conclusion of each assignment. As the claimant's last assignment ended on June 23, 2022, and he was not offered any more work, we find that no employment relationship existed after that date. In light of this, the claimant's failure to meet the employer's Renewal Requirements cannot be considered disqualifying conduct. Accordingly, we conclude that he was properly allowed benefits.

DECISION: The decision of the Administrative Law Judge is affirmed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is overruled.

The initial determination, holding the claimant eligible to receive benefits, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER